



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** MOHEAT, Inc.--Request for Reconsideration

**File:** B-239378.2

**Date:** June 20, 1990

A. L. Haizlip, Esq., McKinney, Stringer & Webster, P.C., for the protester.  
Matthew Pausch, Esq., Defense Logistics Agency, for the agency.  
Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R. Golden Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Third low offeror is not an interested party to question low firm's eligibility for award since it would not be in line for award even if the issue were resolved in its favor.

### DECISION

MOHEAT, Inc. requests reconsideration of our decision in MOHEAT, Inc., B-239378, May 3, 1990, 90-1 CPD ¶ \_\_\_, in which we dismissed MOHEAT's protest of a contract awarded to Corvac, Inc. under solicitation No. DLA 200-89-R-0073, issued by the Defense Logistics Agency for disposal services in Corpus Christi, Texas and surrounding locations. The solicitation provided for award to the low, technically acceptable offeror. We dismissed MOHEAT's protest because we found that its allegations essentially concerned a dispute between private parties which our Office does not adjudicate in the bid protest context. See Kempter-Rossman Int'l, B-232402.2, Mar. 1, 1989, 89-1 CPD ¶ 213.

In its initial protest, MOHEAT contended that one of its former employees was present at a pre award survey of Corvac, on behalf of Corvac, while he was still employed by MOHEAT. MOHEAT argued that awarding Corvac the contract under such circumstances violated various statutory and regulatory provisions and that Corvac's association with the former employee should have rendered it nonresponsible and ineligible for the award.

Since the government was not alleged to have had any part in MOHEAT's former employee's actions, we concluded in our

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prior decision that the protest concerned a dispute between private parties. Additionally, we stated that by awarding a contract to Corvac, the agency found Corvac responsible and that our Office does not review challenges to affirmative determinations of responsibility absent a showing of possible bad faith or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(m)(5) (1990).

In its request for reconsideration, MOHEAT now asserts that government officials failed to consider vital information bearing upon Corvac's responsibility. In this regard, MOHEAT states that Corvac was initially found nonresponsible by the agency, and that the question of the firm's responsibility was referred to the Small Business Administration (SBA) which issued a Certificate of Competency (COC) on March 16, 1990. MOHEAT primarily alleges that SBA officials disregarded information from the contracting officer which showed that the former MOHEAT employee held himself out to be a member of the awardee's firm. MOHEAT further alleges that the SBA, in issuing the COC, disregarded vital information pertaining to Corvac's responsibility furnished by the attorney representing MOHEAT.

Our Bid Protest Regulations require that a party be "interested" before we will consider its protest. 4 C.F.R. § 21.0(a) and 21.1(a). Based on proposal prices submitted, MOHEAT is third in line for award behind Corvac and Chem-Away Transport, Inc., another technically acceptable offeror, and MOHEAT has not challenged Chem-Away's eligibility for an award. A protester is not interested where it would not be in line for award if its protest were upheld. See ISC Defense Sys., Inc., B-236597.2, Jan. 3, 1990, 90-1 CPD ¶ 8. Here, even if MOHEAT's protest were sustained, Chem-Away would be next in line for award. Accordingly, MOHEAT is not an interested party to challenge the award to Corvac.

Accordingly, we dismiss the request for reconsideration.



Ronald Berger  
Associate General Counsel